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6 **UNITED STATES BANKRUPTCY COURT**

7 **DISTRICT OF NEVADA**

8 In re: Case No. BK-S-20-10752-ABL  
 9 JIMENEZ ARMS, INC., Chapter 7

10 Debtor. **TRUSTEE'S EX PARTE APPLICATION  
11 TO EMPLOY GENERAL COUNSEL**

12 Lenard E. Schwartzer, the Chapter 7 Trustee (the "Trustee"), appointed in the above-  
 13 captioned bankruptcy case (the "Chapter 7 Case"), respectfully requests that the Court approve the  
 14 employment of Schwartzer & McPherson Law Firm ("S&MLF") pursuant to 11 U.S.C. § 327(a)  
 15 and Fed.R.Bankr. P. 2014 as counsel for the Trustee. This Application is also based upon the  
 16 Declaration of Jason A. Imes filed concurrently with this Application and the following Points and  
 17 Authorities.

18 **I. BACKGROUND**

19 1. Jimenez Arms, Inc. (the "Debtor") filed a voluntary petition under Chapter 7 of the  
 20 Bankruptcy Code on February 10, 2020 (the "Petition Date").

21 2. Lenard E. Schwartzer is the duly appointed and acting Chapter 7 Trustee in the  
 22 Debtor's case.

23 **II. JURISDICTION**

24 3. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.  
 25 This is a core proceeding pursuant to 28 U.S.C. §157(b). Venue is proper before this Court  
 26 pursuant to 28 U.S.C. §§ 1408 and 1409.

27 **III. REPRESENTATION**

28 4. S&MLF is comprised of attorneys who generally limit their practice to the areas of

1 insolvency, reorganization, related litigation, and bankruptcy law. S&MLF is well qualified to  
2 represent the Trustee as his bankruptcy counsel. S&MLF has represented numerous debtors,  
3 trustees, creditors, unsecured creditors' committees, and other parties-in-interest, and is well  
4 qualified to act as attorneys for the Trustee. S&MLF will serve as counsel to the Trustee.  
5 S&MLF will provide, without limitation, some or all of the following legal services:

- 6 (a) Advise Trustee with respect to rights, powers, and duties as trustee;
- 7 (b) Assist in advising the Trustee in negotiating, reviewing, drafting documents  
and pleadings, and consummating any transactions contemplated during this  
9 Chapter 7 case;
- 10 (c) Assist Trustee with review and resolution of claims asserted against the  
11 Debtor's estate, including claims objection and claims estimation proceedings;
- 12 (d) Assist with any and all litigation necessary or appropriate to assert rights  
held by the Trustee or to defend or protect assets of the Debtor's estate; and
- 13 (e) Advise and assist the Trustee with actions that he might take to collect and  
recover property for the benefit of the Debtor's estate.

16 5. To the best of the Trustee's and S&MLF's knowledge, S&MLF is disinterested  
17 within the meaning of 11 U.S.C. § 101(14) in that S&MLF, its shareholders, counsel, and  
18 associates:

- 19 (a) are not creditors, equity security holders, or insiders of the Debtor;
- 20 (b) are not and were not, within two years before the date of this application, a  
21 director, officer, or employee of Debtor as specified in subparagraph (c) of 11  
22 U.S.C. § 101(14);
- 23 (c) do not hold an interest materially adverse to the interest of the estate or of  
any class of creditors or equity holders except as stated herein.

25 6. S&MLF does not believe it represents any interest that is adverse to the Debtor,  
26 creditors, any other party in interest, their respective attorneys and accountants, the United States  
27 Trustee, or any person employed in the Office of the United States Trustee in matters upon which  
28 it will be engaged as counsel.

1           7. Upon information and belief, neither I, nor any member of S&MLF, has any known  
 2 connections with the Debtor, creditors, or any other party in interest, their respective attorneys and  
 3 accountants, the United States Trustee, or any person employed in the Office of the United States  
 4 Trustee in matters upon which it will be engaged as counsel for the Trustee in this case, **EXCEPT**  
 5 **that Lenard E. Schwartzer is the acting Chapter 7 Panel Trustee for this case, appointed by**  
 6 **the Office of the United States Trustee, and Mr. Schwartzer regularly employs S&MLF to**  
 7 **represent him in other unrelated bankruptcy cases in which he is the Trustee. Mr.**  
 8 **Schwartz is also a senior partner in S&MLF, but he will not bill as an attorney in this case.**

9           8. This Application and accompanying Declaration of Jason A. Imes set forth, to the  
 10 best of Applicant's knowledge, S&MLF's connections (if any) with the Debtor, creditors, any  
 11 other party in interest, their respective attorneys and accountants, the United States Trustee, or any  
 12 person employed in the Office of the United States Trustee.

13           9. S&MLF will supplement these disclosures in the event further connections are  
 14 discovered regarding persons or entities that later become identified as parties in interest in this  
 15 case.

#### 16                  IV. COMPENSATION ARRANGEMENT

17           10. Subject to Court approval, in accordance with 11 U.S.C. § 330, the Trustee seeks to  
 18 retain S&MLF on an hourly basis at the customary and standard rates that S&MLF charges for  
 19 similar representation, plus reimbursement of actual and necessary expenses incurred by S&MLF  
 20 in performing its duties.

21           11. S&MLF expects that its compensation will be based upon a combination of factors,  
 22 including without limitation, experience of counsel, time expended, results achieved, difficulty of  
 23 matters undertaken and S&MLF's hourly rates billed at the rate of \$385.00 for Jason A. Imes and  
 24 various hourly rates for other counsel and support staff within S&MLF as set forth in Exhibit "A"  
 25 to the Declaration of Jason A. Imes filed concurrently with this Application. S&MLF will not  
 26 seek to raise the rates of any member of S&MLF for a minimum of six (6) months after the date of  
 27 the entry of the order approving its employment. S&MLF reserves the right to seek an increase in  
 28 hourly rates in accord with the U.S. Trustee's Guideline on this matter.

1           12. No payments have been made or promised to S&MLF for services rendered in any  
 2 capacity whatsoever in connection with the Chapter 7 Case.

3           13. There is no agreement or understanding between S&MLF or any other entity for  
 4 the sharing of compensation to be received for services rendered in or in connection with this  
 5 Chapter 7 case. No compensation will be paid to S&MLF except as authorized by order of this  
 6 Court, after notice and an opportunity for a hearing.

7           **V. COMPENSATION FOR SERVICES PROVIDED PRIOR TO APPLICATION**

8           14. Pursuant to 11 U.S.C. § 327(a) and Fed.R.Bankr. P. 2014(a), trustee's counsel  
 9 typically cannot recover fees for services rendered to an estate unless the firm's employment has  
 10 been authorized by the Bankruptcy Court. The Ninth Circuit had given bankruptcy courts in the  
 11 Ninth Circuit the equitable power to retroactively approve a professional's valuable but  
 12 unauthorized services performed prior to entry of the retention order. In re Atkins, 69 F.3d 970,  
 13 973 (9th Cir.1995). *Nunc pro tunc* retention orders have been a common practice due to the delay  
 14 between commencement of services to the estate and entry of the formal retention order, and the  
 15 impractical and potentially detrimental impact on the estate if services are not rendered by  
 16 professionals in the meantime.

17           15. The Supreme Court of the United States, however, recently held that "utilizing  
 18 *nunc pro tunc* orders to approve the retention of estate professionals retroactive to some date prior  
 19 to the actual date of court approval is inappropriate." Roman Catholic Archdiocese of San Juan,  
 20 Puerto Rico v. Acevedo Feliciano, 140 S. Ct. 696 (2020). The high court concluded *nunc pro*  
 21 *tunc* orders are appropriate to reflect an event that has already occurred prior to entry of the decree  
 22 through "inadvertence of the court." *Id.* at 700. This ruling in *Acevedo Feliciano* does not,  
 23 however, proscribe orders made effective as of an earlier date, or preclude compensation for work  
 24 completed prior to entry of a retention order. As Bankruptcy Judge Robert E. Grossman noted in a  
 25 recent unreported opinion considering the *Acevedo Feliciano* ruling, "retroactive approval of the  
 26 retention of an estate professional, whether it be *nunc pro tunc*, *post-facto* or any similar  
 27 nomenclature, is not mandated under the Code or Rules." In re: Hector Benitez, Debtor, 2020 WL  
 28 1272258 (Bankr. E.D.N.Y. 2020). Judge Grossman concluded a "professional must be retained as

1 required by the statute, but once having been retained, the bankruptcy court is free to compensate  
2 him for services rendered to the estate at any time, pre and post-court approval, in accordance with  
3 section 330 of the Code.” *Id.* at \*2. Since the Ninth Circuit recognized in Atkins the policy  
4 benefits of allowing compensation of professionals for work provided prior to entry of a timely  
5 retention order, the firm requests the right to request compensation for services provided prior to  
6 entry of the requested retention order, subject to separate review pursuant to 11 U.S.C. §330.

## CONCLUSION

8 The Trustee requests that the Court enter an order authorizing the Trustee to employ  
9 Schwartzer & McPherson Law Firm as his counsel to render services as described above, which  
10 may include services provided prior to this Application, with compensation at the expense of the  
11 Debtor's estate to be in such amount as the Court may hereafter allow pursuant to 11 U.S.C. §330  
12 and Fed. R. Bankr. P. 2016.

13 DATED: June 26, 2020.

/s/ Jason A. Imes  
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